

MINUTES
Montana Fish, Wildlife & Parks Commission Meeting
FWP Headquarters – 1420 East 6th Avenue
Helena, MT

NOVEMBER 10, 2008

Commission Members Present: Shane Colton, Vice-Chairman; Dan Vermillion; Willie Doll; Vic Workman.

Fish, Wildlife & Parks Staff Present: Director Jeff Hagener and FWP Staff.

Guests: See November 10, 2008 Commission file folder for those who signed in.

Work Session: A work session was held immediately following the meeting to discuss the Elk Archery Committee Report and Recommendations

Topics of Discussion:

- 1. Call to Order - Pledge of Allegiance**
 - 2. Approval of Commission Meeting Minutes of October 16, 2008**
 - 3. Approval of Commission Expenses through October, 2008**
 - 4. Western Association of Fish & Wildlife Agencies (WAFWA) Winter Conference Attendance**
 - 5. 2009 Non-Resident Combination License Annual Rule – Final**
 - 6. Ingham/Foys Bend Land Acquisition on the Flathead River – Final**
 - 7. Hay Creek Land Acquisition in the North Fork of the Flathead – Final**
 - 8. Elk Island Fishing Access Site / Wildlife Management Area Land Acquisition - Final**
 - 9. North Shore State Park / WMA Acquisition - Final**
 - 10. Lake Helena Fishing Access Site MOU and Development - Final**
 - 11. McWenneger Slough Fishing Access Site Acquisition – Endorsement**
 - 12. Echo Lake No-Wake Zone Petitions – Endorsement**
 - 13. Mount Haggin Habitat Restoration Project – Endorsement**
 - 14. Open Microphone – Public Opportunity to Address Additional FWP Issues**
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- 1. Opening - Pledge of Allegiance.** Vice-Chairman Colton called the meeting to order at 8:00 a.m. and led the Pledge of Allegiance.
 - 2. Approval of October 16, 2008 Commission Meeting Minutes.**
Action: Vermillion moved and Doll seconded the motion to approve the October 16, 2008 meeting minutes. Motion carried.
 - 3. Approval of the October, 2008 Commission Expense Report.**
Action: Doll moved and Vermillion seconded the motion to approve the October expense report as presented. Motion carried.

4. Western Association of Fish & Wildlife Agencies (WAFWA) Winter Conference Attendance.

Director Hagener stated that the 2009 winter WAFWA meeting is scheduled for January 8-11 in San Francisco. He inquired who, if anyone, wished to participate this year. Last year four Commissioners attended. As it is quite an expensive trip, it would be wise to limit the number of persons who attend. Commissioners Colton and Vermillion expressed interest in attending. They are to confirm as soon as possible so arrangements can be made.

5. 2009 Non-Resident Combination License Annual Rule – Final. Hank Worsech, FWP Licensing Bureau Chief, stated that the Variable-Priced Licensing Advisory Council met August 18 in Helena to decide on fee recommendations for 2009 outfitter-sponsored licenses, which were sold above the quota again in 2008. After considerable deliberation, the Council unanimously recommended a quota of 4,750 for the B-10 Outfitter Sponsored Big Game Combination license at \$1,500 per license, and the Outfitter Sponsored Elk Combination license at \$1,400 per license (part of the B-10 quota), and a quota of 1,800 for the B-11 Outfitter Sponsored Deer Combination license at \$1,100 per license. Statutorily, fees for these licenses must be set at a market rate intended to sell as close to, but not more than, an average of 5,500 B-10 and 2,300 B-11 licenses per year, over a five year period. This is the fourth year of that five-year period. MOGA and the Montana Wildlife Federation support these recommendations.

Action: Vermillion moved and Workman seconded the motion to adopt the 2009 Annual Rule for the Sale of Nonresident Combination Licenses as proposed. Motion carried.

6. Ingham/Foys Bend Land Acquisition on the Flathead River – Final. Chris Hunter, FWP Fisheries Division Administrator, explained that through an agreement with the Bonneville Power Administration, the Confederated Salish and Kootenai Tribes and FWP can spend eight million dollars over the next two years to conserve and protect fisheries habitats in the Flathead River basin through conservation easements or property acquisitions. The 235-acre Foys Bend property meets the ranking criteria, provides substantial fisheries benefits, and has been recommended for acquisition by the joint FWP and CSKT fisheries technical committee. This parcel includes about two miles of cottonwood riverbank habitat, and adjoins several conservation easements. It was appraised at \$3 million in 2007, but the approximate selling price is \$2 million. FWP conducted extensive public notification and received two comments supporting the acquisition, and one comment from a neighbor who expressed concern about increased traffic and public presence.

Action: Workman moved and Vermillion seconded the motion to approve the Foys Bend land acquisition. Motion carried.

7. Hay Creek Land Acquisition in the North Fork of the Flathead – Final. Chris Hunter, FWP Fisheries Division Administrator, explained that this 53-acre acquisition falls under the same BPA agreement as the Ingham/Foys acquisition. The stream has been ranked as a priority acquisition by the FWP and CSKT fisheries technical committee as a means to insure the habitat values of the stream are maintained in perpetuity to provide long-term protection for west-slope cutthroat and bull trout. The parcel adjoins both Forest Service and DNRC lands, and is inhabited by elk, moose, grizzly and black bears, and many other wildlife species. The selling price is \$450,000. The public comment period generated two comments, both in support of the acquisition.

Action: Workman moved and Vermillion seconded the motion to approve the Hay Creek land acquisition. Motion carried.

8. Elk Island Fishing Access Site / Wildlife Management Area Land Acquisition – Final. Joe Maurier, FWP Parks Division Administrator, noted that it is not always possible to obtain small parcels of land for fishing access sites, so Parks and Wildlife have been partnering up on the larger tracts. This 163-acre site is located on the Lower Yellowstone River near Savage. If approved, developments will include construction of a new boat dock. Nine comments were received in response to the Environment Assessment, all in support. Habitat Montana funds and Access Montana funds will be used to purchase this parcel.

Action: Colton moved and Vermillion seconded the motion to approve the Elk Island Fishing Access Site / Wildlife Management Area Land Acquisition. Motion carried.

9. North Shore State Park / WMA Acquisition – Final. Joe Maurier, FWP Parks Division Administrator, explained that this proposal was originally for the acquisition of 160 acres of property along the north shore of Flathead Lake. Another landowner expressed interest in including her 20-acre adjacent parcel in the negotiations, however at the last minute she withdrew her property from negotiations as she felt it was worth more than the \$200,000 that FWP offered her. Therefore the proposal reverts back to the original 160 acres for \$1.8 million. Access Montana money and stipends from the Doris Duke Foundation and the Flathead Valley Land Trust will be the sources of funding.

The Flathead County Commission recently denied the development of a subdivision on the adjacent site based on public comments they received, and because building homes on a flood plain is a questionable endeavor. The attorney representing the developers is of the opinion that FWP is opposing their development, yet wants to buy this land for development into a state park. Maurier said that there is a difference in the type of development, as FWP will develop a campground, with limited structures, that will be utilized predominantly during the summer, as opposed to year-round housing. Campground development is usually allowed in floodplains since there are not a lot of facilities that might wash away.

Workman asked if it is FWP's position to stop the development of the subdivision. Maurier replied no. Colton stated that every subdivision proposal goes through the regional office for comment.

Action: Workman moved and Vermillion seconded the motion to approve the North Shore State Park/WMA acquisition described in the Department's decision notice of October 21, 2008. Motion carried.

10. Lake Helena Fishing Access Site MOU and Development – Final. Joe Maurier, FWP Parks Division Administrator, explained that access to Lake Helena has been a priority for some time. The lake is surrounded predominantly by private property, however the Bureau of Reclamation owns this 5-acre site, administered by the Helena Valley Irrigation District, and they have agreed it would be an ideal location to build a fishing access site for long-term management by FWP. The Madison River Trust and PPL have agreed to help fund this. Public comment on the proposed project was taken for 30 days. Local residents expressed concerns over the potential impacts of public use (trespass, vandalism, traffic, etc.) as well as potential impacts to wildlife. FWP is committed to addressing any neighborhood issues that arise with public use.

Action: Vermillion moved and Doll seconded the motion to direct the Department of Fish, Wildlife and Parks to pursue negotiations with the Bureau of Reclamation and Helena Valley Irrigation District in order to utilize and develop the Lake Helena Access Site in the Helena Valley. Motion carried.

11. McWenneger Slough Fishing Access Site Acquisition – Endorsement. Joe Maurier, FWP Parks Division Administrator, explained that this 40-acre slough is located approximately five miles east of Kalispell. The slough supports northern pike, yellow perch, black bullheads, largemouth bass, waterfowl and a variety of wildlife. The public previously accessed the slough through a private access that was closed in 2004 due to vandalism. FWP has a Recreational Use permit with Montana Department of Transportation to allow anglers to pull off Highway 35 to the edge of the slough. The Flathead Land Trust received this 11.5-acre parcel as a donation, and would like to transfer fee-title ownership to FWP at no cost. FWP would take over operations and maintenance.

Action: Workman moved and Vermillion seconded the motion to direct FWP to open negotiations with the Flathead Land Trust to acquire the 11.5-acre site on McWenneger Slough along with site improvements.

Chairman Colton asked for public comment. There was none.

Action on Motion: Motion carried.

12. Echo Lake No-Wake Zone Petitions – Endorsement. Jim Kropp, FWP Enforcement Division Administrator, explained that FWP received two petitions regarding modifications to the no-wake zone on Echo Lake in Region 1. One petition is from Wayne and Tammy Grilley asking for removal of the 200-foot no-wake zone from the entrance of Sunrise Bay west of Blackies Bay, and the other petition is from Justin Sherman asking for removal of the 200-foot no-wake zone from the entrance of the bay located at the south west side of Echo Lake bordering Echo Chalet. The Commission acted on similar petitions on Echo Lake one year ago resulting in the granting of exemptions to Blackies Bay, Causeway Bay and several Islands.

Kropp said the Department and the Region are opposed to these no-wake zone exceptions, as they were last year, for reasons of public safety. The lake is used for fishing, canoeing and other activities in addition to waterskiing.

Bob Lane, FWP Chief Legal Counsel, stated that the process, the same as one year ago, falls under the Administrative Procedures Act. The Act authorizes the Commission to either initiate rule making on the petitions or to deny the petitions. If the Commission initiates rulemaking, public comment will be taken.

Wayne Grilley, petitioner, said he owns land on Willow Bay adjacent to Blackies Bay, and was under the impression that last years petition included opening the outlet to Willow Bay as well as to Blackies Bay, but that was not the case. Both bays use the same outlet, and three homes are located in that outlet. He said Echo Lake has always been a recreational lake, and he was a proponent for establishing the 200-foot rule to keep jet skis away from the docks. He said he, too, is concerned about safety issues, however the problem only exists during July and August.

Lee Anderson, FWP Region 1 Warden Captain, stated that traveling through those two narrow corridors at a speed over a no-wake speed is a safety risk. Vessels traveling at higher speeds will also cause shoreline erosion and real property damage to docks, etc. The lake is presently used heavily for fishing as well as for boating, and additional growth and more congestion is projected. The Region is being proactive by recommending that the Commission deny the petitions. The Department recommended denial of the petitions last year as well.

Vermillion asked if opening the mouth of Blackies Bay had created any problems. Anderson replied that there had not been an increase in reported accidents.

Workman asked what the Department recommended last year. Anderson replied that the recommendation was to retain the 200-foot no-wake zone.

Colton stated that the Commission was apprehensive about removing the restrictions last year.

Action: Doll moved and Vermillion seconded the motion to deny the petition filed by Wayne and Tammy Grilley regarding the no wake zone in Sunrise Bay on Echo Lake, and to deny the petition filed by Justin Sherman to remove the no wake zone from the entrance of the bay at the southwest corner of Echo Lake bordering Echo Chalet Drive based on public health and safety concerns.

Workman stated that he felt the public can take care of themselves, that additional regulations are unnecessary. He will vote against the motion.

Vermillion asked if there any other less restrictive options to explore. Anderson replied that there are none, other than something complicated such as allowing traffic to only go one way on certain days, and the other way on other days. He added that the channels are narrow and water levels vary significantly. Even if the channel was split in half, there is the potential for two boats to meet at above wake speeds with little room to pass. Human safety is the main concern, with shoreline damage a secondary concern.

Mr. Grilley stated that the depth of the water is fifteen feet deep through the channel, and the rest is fifteen to twenty-five feet deep. He said if you meet someone you throttle back. The visibility is good through the area except for one blind spot. He said he suffers from erosion just as everyone else does.

Bob Lane reiterated that public comment will be taken if the Commission decides to initiate the rulemaking process. The Commission can make adjustments to the proposed rule, or can disapprove it altogether.

Action on Motion: Motion failed. Colton in favor.

Action: Vermillion moved and Colton seconded the motion to approve the Grilley petition, but deny the Sherman petition. Vermillion amended his motion to approve both the Grilley and the Sherman petitions. Workman seconded the amendment.

Chairman Colton asked for public comment. There was none

Action on Motion: Motion carried. Three in favor – one opposed. (Colton opposed).

13. Mount Haggin Habitat Restoration Project – Endorsement. Ken McDonald, FWP Wildlife Division Administrator, explained that this is a stewardship project involving the removal and restoration of 700 acres of beetle killed timber. A contractor will do the logging, and in return for the value of the timber will do restoration work and road repair. Upon Commission approval, this will go through the MEPA process, and an Environmental Assessment will be conducted. If the value exceeds \$100,000 dollars, it will also go before the Land Board for approval. Because sale of timber is considered a disposal of real property, Commission approval is required. Any surplus money will be deposited into the Real Property Trust.

Action: Vermillion moved and Workman seconded the motion to endorse the Mount Haggin Habitat Restoration timber management and stewardship project proposal.

Chairman Colton asked for public comment. There was none

Action on Motion: Motion carried.

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Director Hagener updated the Commission on the brucellosis situation. FWP sent out several test kits, and many have been returned. FWP is working closely with the Department of Livestock on developing a seven-member task force to work on a management plan. Five names will be selected from the applicants who expressed interest in serving on the task force, and Ken McDonald and State Veterinarian Marty Zaluski will serve as co-chairs. FWP recommended Richard Douglas and Brian Logan. The Department of Livestock is working with APHIS on a herd health plan for each livestock producer within the Greater Yellowstone area, and FWP will also sign off on that Plan. It is the hope that the Department's elk management plan will be incorporated into this plan.

Director Hagener stated that the City of Helena completed the 2008 Urban Deer project of killing their quota of 50 deer. They will come before the Commission again to request permission to cull more deer. Missoula and Great Falls are now looking into this too. Tim Burton of the City of Helena and the Association of Cities and Towns are looking at proposing legislation and / or a budget amendment to acquire general fund money to hire a full-time person within FWP to travel to various cities to address similar situations.

**14. Open Microphone – Public Opportunity to Address Additional FWP Issues.** There was none.

*Action: Doll moved and Workman seconded the motion to adjourn. Motion carried.*

Meeting adjourned at 9:55 a.m.

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Shane Colton, Vice-Chairman

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M. Jeff Hagener, Director